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COLUMBIA, SOUTH CAROLINA

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VIA ELECTRONIC FILING

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**Re: State Universal Service Support of Basic Local Service included in a
Bundled Service Offering or Contract Offering
Docket No. 2009-326-C**

Dear Charlie:

Enclosed for filing is the Reply Memorandum of the South Carolina Cable Television Association, CompSouth, NuVox Communications, and tw telecom to the Office of Regulatory Staff. By copy of this letter we are serving the same on Hearing Officer Butler and other parties of record.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/lla
Enclosure

cc: Commission Hearing Officer David Butler (via email & U.S. Mail)
Other parties of record (via email & U.S. Mail)

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2009-326-C

IN RE:

State Universal Service Support of Basic
Local Service Included in a Bundled
Service Offering or Contract Offering

)
) **Reply Memorandum of South Carolina**
) **Cable Television Association,**
) **Compsouth, NuVox Communications,**
) **and tw telecom of south carolina llc**
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)
)

The South Carolina Cable Television Association, CompSouth, NuVox Communications, and tw telecom of south carolina llc (collectively "CLECs") submit this reply to the memorandum filed by the Office of Regulatory Staff in opposition to CLECs' motion to compel.

Confidentiality

The ORS memorandum spends several paragraphs discussing why the documents sought in the motion to compel are confidential and can only be released by order of the Commission. CLECs have consistently acknowledged that the documents have been characterized as confidential by the Commission's orders and that the documents can only be released pursuant to an order of the Commission. CLECs are asking that the documents be released under a protective order from the Commission. This is standard procedure for dealing with confidential information in this forum and others. There is no issue regarding confidentiality.

Relevance

The real question presented by the motion to compel is whether the documents are within the scope of discovery as defined by the Commission's rules and discussed in CLECs' motion to compel. The documents sought by CLECs are the forms submitted by

COLRs in order to withdraw money from the USF. The forms require COLRs to provide their number of "eligible lines." CLECs want to see how COLRs have been reporting eligible lines. In its memorandum opposing the motion ORS argues that these documents are not relevant because "...all lines (bundled or unbundled) that include basic local service are counted for purposes of state USF support." ORS response, p. 2. This argument is completely unpersuasive and raises more questions than it answers.

The forms in question were adopted by the Commission as part of its USF Administrative Procedures by Order No. 2001-996, in Docket No. 97-239-C. In those Administrative Procedures the Commission required COLRs to submit certain information annually in order obtain money from the USF. See South Carolina Universal Service Fund Administrative Procedures (Exhibit B to Order No. 2001-996), Section VII, pp.8-9. The data required by Section VII of the Administrative Procedures is to be used to determine the amount of High Cost Support each COLR is entitled to. The calculation of High Cost Support is explained by the Administrative Procedures.

COLRs will receive High Cost Support based upon the number of eligible residential and single-line business lines served by such COLR in a Designated Support Service Area. The amount of High Cost Support is determined by multiplying the number of eligible lines by the per line support available for such lines in the designated support service area.

Administrative Procedures, p.3.

As explained in the motion to compel, the scope of discovery is broadly defined to "encompass any matter that bears on, or that could reasonably lead to other matters that bear on, any issue that is or may be in the case..." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). While CLECs have not had access to the forms and are therefore unable to state all of the ways in which they will be relevant, it is clear that these documents bear on the issues in this proceeding and are very likely to lead to other matters of relevance. For example, the forms require COLRs to state the maximum amount that they can charge for their eligible lines. Since bundles and

contract offerings are unregulated it will be interesting to see how COLRs have responded to that question and the responses are highly likely to be relevant to the issues in this proceeding.

The Commission's Administrative Procedures make it clear that since the USF began operations COLRs have been required to report certain lines – those eligible for USF support – and exclude other lines – those ineligible for USF support. CLECs believe that unregulated bundles and contract offerings are lines that are ineligible for support and that such lines should not be reported. In order to prepare for the hearing on this matter CLECs need to see how the COLRs have been reporting their eligible lines. While ORS apparently has a different view of what is meant by the term “eligible lines,” CLECs do not agree with the ORS view and are entitled to obtain these documents in discovery so that they can prepare to advance their view of whether bundles and contract offerings are eligible lines.

The documents sought by the CLECs are well within the scope of discovery. They can be easily produced by ORS and can be protected by an appropriate order of the Commission. For these reasons CLECs request an order requiring ORS to immediately produce documents covered by Request 1-1.

Dated this 1st day of October, 2009.

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DOCKET NO. 2009-326-C

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Dated at Columbia, South Carolina this 1ST day of October, 2009.



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